

Eng, Sharon

From: Boyd, Andrew
Sent: Wednesday, April 16, 2014 7:30 AM
To: Eng, Sharon
Subject: FW: Shoshonne-Bannock Tribes win appeal in tribal court - for FOIA

From: MacIntyre, Mark
Sent: Wednesday, April 16, 2014 7:04 AM
To: Boyd, Andrew
Subject: Fw: Shoshonne-Bannock Tribes win appeal in tribal court

I'd like to get your thoughts on this....MM

From: Sheldrake, Beth
Sent: Wednesday, April 16, 2014 6:28:47 AM
To: Grandinetti, Cami; Mackey, Cyndy; Ordine, Charles; Rochlin, Kevin; Albright, Rick; Cohen, Lori; McLerran, Dennis; Woods, Jim; Wernitz, James; MacIntyre, Mark; Jennings, Jannine
Subject: Fw: Shoshonne-Bannock Tribes win appeal in tribal court

Fyi

From: Edgell, Joe
Sent: Wednesday, April 16, 2014 6:14:36 AM
To: Fonseca, Silvina; McDonough, Barbara; McGraw, Sara; Dailey, Anne; Sheldrake, Beth
Cc: Myers, Robert; Tyner, Lee
Subject: RE: Shoshone-Bannock Tribes TERO

FYI....

- [/ News](#)

Tribes win appeal against phosphate plant

Tribal member tells panel about duck bursting into flames

[Staff Writer](#)

POSTED: 05:05 PM MDT Apr 15, 2014

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FORT HALL, Idaho -

A three-judge appellate court panel has ruled the Shoshone-Bannock Tribes have civil jurisdiction over the FMC Corporation, according to a new release from the tribes.

In a 32-page statement of decision, the court ruling requires FMC to pay the tribes \$1.5 million a year for a waste storage permit as long as waste generated by the company's phosphorous production plant remains within the reservation.

The tribes said the waste stored on the FMC property includes millions of tons of phosphorous slag, at least 16 tons of elemental reactive and ignitable elemental phosphorous, almost a million tons of contaminated soil, and many other hazardous wastes.

FMC Corporation operated the world's largest elemental phosphorous plant in Power County from 1949 to 2001. In September, 2012, the Environmental Protection Agency selected a cleanup plan that included capping of contaminated soil and extraction and treatment of contaminated groundwater. FMC estimated the cleanup would cost \$60 million and take two to three years to complete.

The appeal centered on whether the tribes had civil jurisdiction over FMC, a non-Indian, fee land owner within the Fort Hall Reservation. During two weeks of court hearings, tribal lawyers argued a concept called the "Montana second exception" -- that the fee land threatened the health and welfare of the tribes.

Fort Hall Business Council Chairman Nathan Small testified that the land was no longer cherished by the tribes. "This case is not about capping, excavation, etc. It's about contaminated water, a contaminated ecosystem and threatened hunting and gathering subsistence for my people," he said.

Tribal member and former Tribal Council member Claude Broncho testified that he once witnessed a duck in flight spontaneously ignite after flying out of one of the uncovered FMC ponds.

Shoshone Bannock lawyers argued the conduct of FMC had direct effect on the political integrity, economic security and the health or welfare of the tribe.

In a closing statement, co-counsel Paul Echo Hawk said, "This is the Shoshone-Bannock Tribes' land. The only land they have left. The land is not good any more, the fish & wildlife is not the same (in that area)."

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